

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

*Original with affidavit
of Service*

76-1274

To be argued by
MARC MARMARO

United States Court of Appeals
FOR THE SECOND CIRCUIT

Docket No. 76-1274

UNITED STATES OF AMERICA,

Appellee,

—v.—

JOSEPH METZGER,

Defendant-Appellant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

**BRIEF AND APPENDIX FOR THE UNITED STATES
OF AMERICA**

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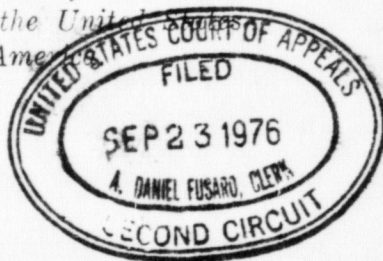


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BRIEF FOR THE UNITED STATES OF AMERICA

Preliminary Statement

Joseph Metzger appeals from a judgment of conviction entered on June 1, 1976, in the United States District Court for the Southern District of New York, after a ten day trial before the Honorable Milton Pollack, United States District Judge, and a jury.

Indictment 75 Cr. 515, filed May 30, 1975, charged Metzger and nine other defendants variously in 127 counts with misapplication of bank funds in violation of Title 18, United States Code, Section 656; acceptance of gratuities by a bank officer in connection with a loan in violation of Title 18, United States Code, Sections 215 and 2; false statements in violation of Title 18, United States Code, Sections 1001 and 2; false statements in connection with obtaining a bank loan in violation of Title 18, United States Code, Sections 1014 and 2; false entries in bank reports in violation of Title 18, United States Code,

Sections 1005 and 2; wire fraud in violation of Title 18, United States Code, Sections 1343 and 2; obstruction of justice in violation of Title 18, United States Code, Sections 1503 and 2; and conspiracy in violation of Title 18, United States Code, Section 371.*

* The nine other defendants named in Indictment 75 Cr. 515 are as follows: Charalambos Amanatides, also known as "Harry Amanatides," Amilcas Ion Livas, also known as "A. Ion Livas," James D. Hanlon, Michael Blonsky, Costas Naslas, Paul Katritsis, Gregory Spartalis, John J. Shevlin, and Michael A. Panayotopoulos. Amanatides, Livas, Blonsky and Spartalis failed to appear for arraignment and are fugitives. The trial of Hanlon, Naslas and Katritsis was severed from that of Metzger and was held before Judge Pollack and a jury between June 2 and June 16, 1976. That trial resulted in the conviction of all three defendants as set forth below.

On July 26, 1976, Hanlon was sentenced to five years imprisonment on Counts 10, 18, 22, 36, 51, 65 and 67 and two years or Counts 56, 57, 66, 68, 75 and 76 of the indictment; Naslas was sentenced to two years imprisonment on Counts 51, 62, 63, 65, 66 and 76, with six months of such sentence to be served in custody and the remainder suspended, and three years probation to begin upon the expiration of the period of incarceration; Katritsis was sentenced to concurrent terms of two years imprisonment on Counts 51, 56-59, 65 and 66, with four months of such sentence to be served in custody and the remainder of the sentence suspended, and three years probation to commence at the expiration of the period of incarceration. Hanlon, Naslas and Katritsis are presently on bail pending appeal.

Shevlin pleaded guilty on November 14, 1975, to Count 34 of Indictment 75 Cr. 515, charging him with making false statements in connection with a bank loan and to Information 75 Cr. 1097, charging him in one count with the receipt of money in exchange for the granting of bank loans, in violation of Title 18, United States Code, Section 215. On July 7, 1976, imposition of sentence was suspended and Shevlin was placed on probation for five years.

Panayotopoulos entered a guilty plea to Count 126 of Indictment 75 Cr. 515 on April 25, 1976, and on July 16, 1976 was fined \$1500.

Information 75 Cr. 1176, filed on December 4, 1975, charged Metzger and four other defendants in six counts with receipt of commissions or gifts for procuring loans, in violation of Title 18, United States Code, Section 215, and conspiracy, in violation of Title 18, United States Code, Section 371.*

Four other individuals entered guilty pleas to separate informations in related cases.**

* The four other defendants named in Information 75 Cr. 1176, are Amanatides, Livas, Naslas and Spartalis. At the trial before Judge Pollack conducted from June 2nd to 16th, 1976, described in the footnote to the previous page, Naslas was convicted of the conspiracy count and two substantive counts in this information charging him with making payments to bank officers and acquitted on one such substantive count. On July 26, 1976, Naslas was sentenced to one year imprisonment on each of Counts 1, 3 and 4 of the information, with six months of such sentence to be served in custody; the remainder of the sentence was suspended and Naslas was placed on three years probation to begin after the expiration of the prison term. These sentences were to run concurrently with the sentences imposed on Indictment 75 Cr. 515.

** Mark Scufalos pleaded guilty to both counts of Information 75 Cr. 1060 charging him with making false statements in connection with a loan in violation of Title 18, United States Code, Section 1014 and on July 8, 1976, was fined \$5,000 on each count by Judge Pollack.

Nico Cotzias pleaded guilty to Information 75 Cr. 1128, which charged him in one count with making false statements in connection with financial statements of Tidal Marine International Corporation, in violation of Title 15, United States Code, Sections 78 and 78ff(a); Title 17, Code of Federal Regulations, Sections 240.106-5b; and Title 18, United States Code, Section 2. On June 4, 1976, Judge Pollack fined Cotzias \$500.

Stanley Farber pleaded guilty to Information 76 Cr. 402, charging him in one count with making a false statement to the Securities Exchange Commission in violation of Title 18, United States Code, Sections 1001 and 2. On August 31, 1976, Judge Pollack fined Farber \$2500 and placed him on probation for a period of two years.

[Footnote continued on following page]

The trial of Metzger began on March 29, 1976, and concluded on April 9, 1976, when the jury found Metzger guilty of the wilful misapplication of bank funds as charged in Counts 40, 41, 42, and 77 of Indictment 75 Cr. 515 and acquitted Metzger on Counts 39, 53, 55, 74, 119 and 120 of the indictment and all six counts of Information 75 Cr. 1176.*

On June 1, 1976, Judge Pollack sentenced Metzger to concurrent terms of three years imprisonment on each of counts 40, 41, 42 and 77.

Metzger is at liberty on bail pending appeal.

Statement of Facts

The Government's Case

A. Summary

The evidence at trial established that Joseph Metzger ("Metzger"), a vice-president of the National Bank of North America ("NBNA"), participated in a scheme to extend fraudulent loans in excess of \$13 million to Tidal Marine International Corporation ("Tidal Ma-

Francis A. Marone pleaded guilty to Information 76 Cr. 436 charging him in one count with overvaluing security in connection with a bank loan, in violation of Title 18, United States Code, Section 1014. On July 16, 1976, Judge Pollack sentenced him to two years imprisonment, with four months of such sentence to be served in custody; the remainder of the sentence was suspended and Marone was placed on probation for two years to follow the term of imprisonment. A fine of \$2,500 was also imposed. Marone is presently serving his sentence.

* Counts 38, 52, 54, 69, 71, 72, 73, 85, 88, 92, 93, 100, 107, 108, 110, 114, 115, 116, 117, and 118 of Indictment 75 Cr. 515, in which Metzger was also charged, were severed prior to trial.

rine") and its subsidiaries and affiliates. Tidal Marine was a public company which owned and operated ocean-going vessels. Its income was derived from leasing or chartering its ships for the purpose of carrying oil or dry cargoes.

Between 1970 and 1971, Tidal Marine embarked upon a major course of expansion, involving the rapid purchase of a great many ocean-going cargo vessels. Throughout this period, Tidal Marine relied heavily upon bank loans to obtain funds for the purchase of its vessels. During 1970-71, Tidal Marine borrowed approximately \$9.5 million from NBNA. In August, 1971, the Ship Loan Committee at NBNA ("Loan Committee") decided that in view of Tidal Marine's rapid expansion, the bank should cease lending to Tidal Marine until there was some evidence that the company had obtained additional financing to improve its deteriorating working capital position. Thereafter, Metzger participated in a series of loans in which it was falsely represented to the bank that the borrowers were companies owned by an individual named Mark Scufalos, president of Union Commercial Steamship Company ("Union Commercial"), while the borrowers were actually companies owned by Tidal Marine and its subsidiaries. In connection with certain of the foregoing loans Metzger was promised pay-offs of \$140,000 by Harry Amanatides, president of Tidal Marine, and actually received \$45,000.

In presenting these loans to the Loan Committee, Metzger failed to inform it that Scufalos was merely fronting for Tidal Marine. Metzger also concealed relevant facts concerning the credit worthiness of the borrower—whether Tidal Marine or as Metzger claimed he believed, Scufalos—and made false statements of material facts in his presentations to the Loan Committee. Moreover, Metzger participated in the approval of unauthor-

ized short term loans to Tidal Marine companies in amounts aggregating several hundred thousand dollars, much of which was used to avoid default on the quarterly payments on the loans allegedly obtained by Scufalos.

Tidal Marine experienced increasingly serious financial problems during 1971-72, and, partly as a result of an extremely depressed shipping market, ultimately collapsed in the summer of 1972.

B. NBNA Procedures in Approving Loans

Lending officers at NBNA were subject to written guidelines governing the extension of credit by the bank. Pursuant to these regulations, officers were authorized to make loans to a given customer up to their individual lending limit without seeking the prior approval of senior officials. During 1971-72, the members of the Ship Loan Department were in order of authority, Gregory Spartalis, Joseph Metzger and John Shevlin, and their lending limits for unsecured loans were \$150,000, \$125,000 and \$50,000, respectively.* A NBNA officer's lending limit for secured loans was three times as great as his limit for unsecured loans. ** In determining whether a loan was within an officer's lending limit all

* These were the amounts as of July, 1971. In February and July, 1972, the amounts were changed, but the increases were not significant and none of these limits ever exceeded \$200,000 (Tr. 67; GX 3A).

References to pages of the trial transcript and to Government Exhibit are abbreviated herein as "Tr." and "GX", respectively.

** A loan would be considered secured if it was secured by life insurance policies with sufficient cash value, certificates of deposits, readily marketable securities or savings account passbooks. Loans secured by all other types of collateral would be considered unsecured. (Tr. 66-67; GX 3A).

prior loans, or portions thereof, then outstanding to that customer had to be considered.* (Tr. 55, 68-68, 687- 688, 691-692, 893; GX 3A).

Bank regulations prescribed that loans in excess of an officer's authority had to be approved by the Loan Committee, which consisted of the three officers in the Ship Loan Department and three or four senior bank officers. An officer recommending a loan was required to present a loan fact sheet and loan offering sheet to the Loan Committee describing the proposed transaction and stating the reasons why the loan was requested.** (Tr. 688). Prior to submitting a proposed loan to the Committee it was the practice of the members of the Ship Loan Department to discuss the transaction among themselves and only to recommend it to the Committee if it met with their unanimous approval. (Tr. 689, 897).

In evaluating a proposed ship loan, the Loan Committee considered various factors: the qualifications of the borrower to operate the vessel, the size and nature of the vessel, the charter on the vessel *** and the amount

* All loans to related or affiliated customers as well as contingent liabilities of a proposed borrower—such as guaranties—were also considered in applying the individual lending limits. (Tr. 68, 691; GX 3A).

** If a loan was within an officer's lending limit only a loan offering sheet had to be prepared showing the amount of the loan, the interest rate, the maturity date and the repayment schedule, and the amount of loans already outstanding to the officer's lending limit, was made, a loan fact sheet also had to be prepared which contained such information as the identity of the borrower, the purpose of the loan, the security, if it was secured, and the amount of loans already outstanding to the borrower. (Tr. 690).

*** The charter is the contract between the ship owner and a third party for the employment of the vessel. It specifies the term and rate of such employment. (Tr. 64).

of prior loans outstanding to the borrower. (Tr. 694-695). The value of the charter was a particularly important factor in the Loan Committee's decision since the revenue generated by the charter (which is known as charterhire) was used to repay the loan. (Tr. 64, 694).

If the terms of a transaction had to be changed following the Loan Committee's approval but prior to the closing of the loan, the officer in charge of the account was required to present the proposed changes to the Loan Committee for approval. If this were not practical, the officer was required to notify the Committee about the changes as soon as possible. (Tr. 69).

C. NBNA's Relationship With Tidal Marine

Tidal Marine began to obtain ship loans at NBNA in July, 1969. By August, 1971 NBNA had extended loans in the amount of approximately \$9.5 million to Tidal Marine and its subsidiaries. (Tr. 70, 696, 895). This account was initially handled by Spartalis, who was assisted by Shevlin, but as time went on Metzger became increasingly active in the management of the Tidal Marine account. (Tr. 897-898). In August, 1971 at a meeting attended by Metzger, the Loan Committee decided that there would be no further loans to Tidal Marine until the company was able to obtain additional financing to improve its working capital situation. (Tr. 71, 697).

D. Scufalos Emerges as a Major "Borrower" at NBNA—The Six Dry Cargo Loan and the May and the June Loan

At about the time the Loan Committee decided to hold off on further loans to Tidal Marine, Metzger began to make a series of ship loans to an individual named

Mark Scufalos.* (Tr. 72, 697). Scufalos was president of Union Commercial, a company whose business was to operate dry cargo vessels on behalf of various owners.** Scufalos himself had an ownership interest in several of the vessels which were managed by Union Commercial. (Tr. 249-250; GX 25). Prior to 1971, Scufalos had borrowed a total of about \$700,000 from NBNA and its predecessor banks in several small transactions. On those occasions, Scufalos had dealt with Metzger. (Tr. 214).

In March, 1971 Scufalos, acting on behalf of the individual ship owning corporations, agreed to sell a fleet of thirteen dry cargo vessels for approximately \$15 million to Tidal Marine, which was to pay 43% of the purchase price in cash upon the delivery of each vessel and the remainder in both cash and Tidal Marine stock at intervals during the following year. (Tr. 205-206; GX 120). Scufalos testified that these vessels were actually worth only about \$5.5 million at the time of the sale because the shipping market was depressed and the vessels were old and lacked steady employment. (Tr. 208).

A short time after the sale of the dry cargo vessels, Scufalos was asked by Harry Amanatides, president of Tidal Marine, to help with the arrangements for financing the purchase price of these vessels. (Tr. 203, 209-211). Responding to this request, Scufalos aided Tidal Marine in financing three of the vessels at Williams & Glyn's Bank in London. (Tr. 210-211).

In July, 1971 Amanatides again asked Scufalos for help in financing at NBNA an additional six dry cargo

* See GX 152, in Appendix, *infra*, for a listing of the ship loans made by NBNA during 1971-72 to companies purportedly owned by Mark Scufalos.

** Each vessel was owned by a single corporation, with the shares of that corporation owned by various shareholders. (Tr. 204).

vessels from the group of thirteen which had been sold to Tidal Marine. Scufalos came to New York and was told by Amanatides that it was necessary for Scufalos to appear as the borrower on the loan instead of Tidal Marine because Tidal Marine had reached its lending limit at NBNA. Amanatides instructed Scufalos to approach Metzger and to request a loan in the amount of \$3.3 million for the purported purpose of enabling Scufalos to buy out his partners' interest in the six vessels. Amanatides told Scufalos to tell Metzger, if he asked about the employment for the vessels, that the ships were on time charter to Transoceanic Shipping Company ("Transoceanic"), a concern in which Ion Livas, a principal of Tidal Marine and chairman of its board of directors in 1972, had an interest. (Tr. 203, 212-214, 899). Both of these representations were false. The actual purpose of the loan was to enable Tidal Marine to finance its purchase of the vessels—none of which was operating on charters to Transoceanic. (Tr. 212-214).

When Scufalos approached Metzger for the loan as instructed,* Metzger told him there would be no problem. During this meeting Amanatides, who was known by Metzger to be affiliated with Tidal Marine, came by and joined in the discussion about the operating expenses of the vessels. (Tr. 215-217, 383, 389-392).

A loan in the amount of \$3.3 million for the six dry cargo vessels was approved by the Loan Committee on July 27, 1971. (GX 25). The loan fact sheet submitted by Metzger recited that the purpose of the loan was for Scufalos to buy out his partners' interest in the vessels and indicated that the earnings from the time charters

* Scufalos pleaded guilty to making false statements to NBNA in connection with this loan.

which were to be pledged to the bank would be more than sufficient to repay the loan. (Tr. 73, 46; GX 2, 25).* As a condition of the Loan Committee's approval, the Committee required that the Ship Loan Department obtain evidence that Transoceanic had sub-chartered the vessels to respectable charterers approved by the bank. (Tr. 421-422, 697-702; GX 25).**

Scufalos testified that he never supplied Metzger with the names of any of the sub-charterers and in his grand jury testimony introduced at trial, Metzger said he could not recall the name of any such sub-charterer. Moreover, Scufalos, who continued to manage these vessels during the following year, said that during this period the shipping market was depressed, that the vessels were not continuously employed and that they did not earn enough income to cover their operating expenses.*** (Tr. 218-219, 233-234, 422-423, 614-615).

The closing of this loan occurred on August 11, 1971. The borrowing corporations were represented by James Hanlon, Tidal Marine's admiralty lawyer and the lawyer who had represented Tidal Marine when it had contracted to purchase the vessels from Scufalos and Union Commercial in March, 1971. Personal guaranties of both Scufalos and Amanatides were submitted to the

* Although it was intended that the earnings from these time charters would be sent directly to NBNA to repay the loan, in all but one instance, repayments on this loan were made from other sources, which generally were the proceeds of other loans. See GX 154, in Appendix, *infra*, for a description of the method by which repayments were made on this loan and on a loan on two other dry cargo vessels, the May and the June. See pages 13-14, *infra*, for a discussion of the May and June loan.

** Transoceanic was not itself a company which used ships to carry freight. (Tr. 409-410, 701).

*** In the grand jury, Metzger admitted that from the end of 1970 until the latter part of 1972 there existed "... one of the worst shipping markets that one had known about." (Tr. 367).

bank. (Tr. 206, 211, 425, 429-430; GX 31). At Metzger's direction, the proceeds of the loan were disbursed to Eldorado Investments, an account listed as being "c/o Mr. Harry Amanatides." (GX 12I).

This loan was to be repaid by having the Union Commercial checking account debited every month in an amount equal to one-third of the quarterly payment, which was to be deposited into a special cash collateral account so that at the end of each quarter there would be a sufficient amount in that account to make the quarterly payment. (Tr. 81, GX 12I).

The documentation submitted to Metzger in connection with the loan included the following: (1) an appraisal prepared by P. Wigham-Richardson & Company ("P. Wigham-Richardson") which was addressed not to Union Commercial, the purported borrower, but rather to Galaxy Steamship Corporation ("Galaxy Steamship"), a Tidal Marine subsidiary, and which contained valuations of all thirteen vessels which Tidal Marine had purchased in March, 1971 (Tr. 88, 392-393; GX 25);* (2) a second appraisal from P. Wigham-Richardson, addressed to Union Commercial, dated March 1, 1971, which listed the valuation of the ~~six~~ vessels being financed under a date more than five months prior to the closing date;** and (3) a personal means statement of

* Despite the fact that NBNA had an arrangement with independent appraisers, the only appraisal submitted in connection with this transaction was an appraisal of P. Wigham-Richardson submitted by the borrower. Gerald Bachman, senior vice president of NBNA and member of the Loan Committee, testified that he was unaware that the appraisal for this transaction was submitted directly to NBNA by the borrower and not the appraiser. (Tr. 65, 695, 709).

** In the grand jury, Metzger claimed that he requested the second valuation because he did not expect to receive an appraisal from Tidal Marine since Union Commercial was the borrower. (Tr. 393-394). However, it never struck Metzger as strange, he claimed, that the valuation which he had specifically requested in the summer of 1971 came with a March, 1971 date. (Tr. 399-400).

Mark Scufalos which set the value of the six vessels being financed at only approximately two-thirds the value assigned by Metzger to these vessels on the loan fact sheet submitted to the Loan Committee. (Tr. 392-402, 410-417; GX 25). These documents in Metzger's possession strongly suggested that the six ships the bank was financing for the purported purpose of enabling Scufalos to buy out his partners' interests had previously been sold by Scufalos to Tidal Marine and had been overvalued by Metzger.

The next Tidal Marine loan recommended by Metzger involved the refinancing of the vessels the May and the June, which also were two of the thirteen dry cargo vessels sold to Tidal Marine in March, 1971. (GX 120). Once again Scufalos was used as a front for Tidal Marine. This loan was for \$1.7 million and closed on November 3, 1971. The loan fact sheet signed by Metzger falsely stated that the purpose of the loan was to enable Scufalos and Livas to purchase these vessels. (Tr. 226-227; GX 12cc, 33). In addition, the loan fact sheet understated by nearly \$500,000 the amount of Scufalos' outstanding indebtedness at NBNA, all of which arose from the six dry cargo loan closed by Metzger just seven weeks before; * falsely stated that the vessels were on time charter to Transoceanic; and assigned a greater value to the vessels than either the P. Wigham-Richardson appraisal submitted in support of the loan or the Scufalos personal means statement submitted in connection with the August, 1971 loan on the six dry cargo vessels.** (Tr. 78, 210-211; GX 25, 33).

* See GX 150 in Appendix, *infra*, for a listing of the discrepancies between the actual amount of Scufalos' indebtedness and the amount stated on Metzger's loan fact sheet for this transaction and for two subsequent Scufalos transactions.

** The value of the May and the June totaled \$2,750,000 in the loan fact sheet submitted by Metzger, \$2,500,000 in the P. Wigham-Richardson appraisal and \$1,400,000 in the Scufalos personal means statement. (GX 25, 33).

While Metzger represented to the Loan Committee that Scufalos was the borrower, Scufalos himself had no contact with any bank employee concerning this loan and had no knowledge that he had been put forth as the borrower. (Tr. 225-227; GX 33).^{*} At the closing, the borrowing corporations were again represented by Tidal Marine's lawyer, James Hanlon, who acted both as their legal counsel and as attorney-in-fact and, as such, signed many documents on their behalf. (GX 33, 34, 35).

E. Tidal Marine Promises Payoffs

In November, 1971, Spartalis called Shevlin into his office and told him that Amanatides would be making a proposal and that there would be money in it for both Metzger and him. Shortly thereafter, Amanatides arrived and an agreement was reached whereby Spartalis, Metzger and Shevlin would each be paid \$70,000 in installments for their help in obtaining four loans on vessels which Tidal Marine purportedly would be selling.^{**} These

^{*} Both Scufalos and Amanatides acted as guarantors for this loan. Scufalos had guaranteed the original financing by Tidal Marine of the May and the June at Williams and Glyn's Bank in London in May, 1971 at Amanatides' request. (Tr. 209-211). In October, 1971, Scufalos testified that Amanatides had told him that Tidal Marine was refinancing these vessels at NBNA and that a portion of the proceeds would be given to Union Commercial to cover an operating deficit. It was in this connection that Scufalos submitted his guarantee. (Tr. 225-226).

^{**} Shevlin pleaded guilty to accepting a \$10,000 bribe from Amanatides on December 24, 1971. While Shevlin did not see Spartalis receive any money from any officer of Tidal Marine, documentary evidence indicated that between 1971-72, Spartalis deposited checks totalling several hundred thousand dollars in a Swiss bank account which was under his control. Those checks were drawn on a private bank account of A. Ion Livas, one of Tidal Marine's principals. (Tr. 1038; GX 181A, 181B, 181C, 182).

vessels were the Tropis and Tekton, for which Scufalos was to be presented as the purchaser and borrower, and the Aris and Tachys, for which Michael Panayotopoulos was to be presented as the purchaser and borrower.* Amanatides promised to submit the documentation on these loans in the near future. (Tr. 902-904). A short while later Metzger and Shevlin discussed Amanatides' proposal in Spartalis' office. (Tr. 904).

The first payment of \$10,000 to Metzger and Shevlin occurred on Christmas Eve, 1971, and was made by Amanatides in cash at the bank at the time of the closing on the Tropis and Tekton.** Afterwards, Shevlin suggested to Metzger that it might be better for them to rent a car to go home, but Metzger disagreed and they rode home as usual on the train. (Tr. 101-102, 904-908).

A second \$10,000 payment to Metzger and Shevlin occurred in early January, 1972, following the closing on the Aris loan.*** On that occasion Metzger and Shevlin went to the Tidal Marine offices, and Costas Naslas, a Tidal Marine officer, gave each of them a white envelope.**** Shevlin testified that his envelope contained \$10,000 in cash and that Metzger indicated that the contents of his envelope were similar. (Tr. 311, 554-555, 907-908).

* Panayotopoulos entered a guilty plea to making a false statement in connection with a bank loan.

** See pages 17-19, *infra*, for a discussion of this transaction.

*** The Aris transaction closed in late December, 1971, and involved the sale of the vessel Aris by a Tidal Marine subsidiary to a company owned by Michael Panayotopoulos. Panayotopoulos' purchase was financed by NBNA. Tidal Marine continued to manage the vessel after the sale. (Tr. 52, 907).

**** Naslas was subsequently convicted of conspiracy in connection with the payments to the bank officers and of participating in the second and third payments. He was acquitted of participating in the fourth payment.

A third \$10,000 payment was made in the latter part of January, 1972. At that time Spartalis asked Shevlin if he had received any further payments. When Shevlin replied that he had not, Spartalis said he would do something about that and proceeded to call Naslas. (Tr. 908-909). Shortly thereafter, Naslas called Shevlin and an arrangement was made whereby Tidal Marine would withdraw money from NBNA under the guise of requiring such money to meet a ship's payroll. Metzger and Shevlin then went to Tidal Marine's office where Naslas handed each of them two envelopes. Shevlin testified that one envelope contained \$10,000 and another contained photographs from Tidal Marine's Christmas party, which he and Metzger had attended. (Tr. 908-909; GX 168-180).*

A fourth payment occurred in March, 1972, subsequent to the closing on the Tachys loan.** At that time Metzger and Shevlin again went to the Tidal Marine offices where Naslas handed each an envelope. Shevlin's envelope contained \$10,000 in cash. (Tr. 911).

The fifth and final payment also occurred in March, 1972. At that time Metzger told Shevlin that Amanatides wanted to see them. The bank officers then met with Amanatides in the lobby of a nearby building, where Amanatides handed each of them an envelope which, he said, contained \$5,000 in \$500 bills and travelers' checks. Metzger subsequently told Shevlin that he had destroyed the cash and travelers' checks he had received from Amanatides on this occasion. (Tr. 911-913; GX 187).***

* Metzger's fingerprint was found on one of the photographs received on that occasion. (Tr. 1025-1026; GX 170).

** The Tachys transaction closed in early February, 1972 and involved the sale of the vessel by a Tidal Marine subsidiary to a company owned by Michael Panayotopoulos.

*** After the fifth payment, Spartalis told Shevlin that Metzger had previously been involved in receiving gratuities from other bank customers. (Tr. 915). Moreover, the Government introduced

[Footnote continued on following page]

There were additional discussions of payoffs in the spring of 1972. In April, Spartalis told Metzger and Shevlin that Naslas was buying a ship and that each officer would receive several thousand dollars. A short while later, Spartalis told Metzger and Shevlin that they would each receive \$70,000 for both the Naslas purchase and another Tidal Marine transaction later handled by Metzger involving a vessel named the Tagma.* However, Shevlin never received any payments for these transactions. (Tr. 915-916).

In February, 1972, Metzger installed in his home a safe which cost \$826.80. He paid for all but \$100 of this amount in cash. (Tr. 1047-1054; GX 188). Metzger told Shevlin that he purchased this safe to keep the money he had received from Tidal Marine. (Tr. 916-917). Shevlin subsequently purchased the same safe for his Tidal Marine payoffs (Tr. 916-917; GX 163, 164).

F. The Tropis and Tekton

In December, 1971, on Metzger's recommendation, NBNA loaned \$5.5 million to finance the purchase of two tankers, the Tropis and the Tekton, two of the ships for which payoffs were made. As in the case of the six dry cargo loan, as well as the loan for the May and the June, the loan fact sheet signed by Metzger falsely portrayed Scufalos as the borrower. However, Scufalos had

evidence that during 1972 Metzger and Shevlin received a payoff from a customer of the bank named Mrs. Martinos. Both officers received from Mrs. Martinos ten shares of stock in two ships for their aid in helping her obtain financing for those ships from the bank. These ships were the subject of NBNA loans for which Metzger had signed the loan fact sheet and were pledged to the bank as collateral at the time the shares were received by Metzger and Shevlin. (Tr. 921-925; GX 161, 162, 183, 184).

* See pages 23-26, *infra*, for a discussion of the Tagma transaction.

no role in negotiating or closing this loan, which in reality was a Tidal Marine refinancing. The proceeds of the loan were deposited into the account of a Tidal Marine subsidiary and in part used to make a repayment on the six dry cargo loan. (Tr. 88, 228-229, 233, 284-289, 882-883; GX 12gg, 12hh, 154).

Metzger admitted in the grand jury that the request for the loan on these vessels had been relayed from Amanatides to Spartalis and that he was not approached by Scufalos in connection with this loan. (Tr. 552). Metzger further testified in the grand jury that he received much of the information he needed to prepare the loan fact sheet from Naslas, whom he knew to be a Tidal Marine employee. (Tr. 554-557).

The loan fact sheet signed by Metzger stated that Scufalos had always lived up to his obligations at NBNA and that the then outstanding balance on his loans was \$3,025,000. (GX 39). However, as Metzger knew, the first quarterly installment on the six dry cargo loan had not come from charterhire payments as intended, but rather from a \$242,001 short term loan made by Metzger to avoid a default.* Gerald Bachman, senior vice-president at NBNA, testified that this fact—which was not revealed to the Loan Committee by Metzger—“would have been of very critical importance . . . because it would have indicated some problem, that those vessels were not operating in a way that they were providing the revenues to pay [the NBNA] loan.”** In

* Moreover, this loan was repaid by Galaxy Steamship, a Tidal Marine subsidiary. (GX 154).

** The making of such a loan was improper under bank procedures. (Tr. 715). Metzger not only failed to submit the loan to the Loan Committee as required, but also violated the bank's policy against making loans in order to enable the borrower to meet a payment on a loan already outstanding. (Tr. 715).

addition, the actual amount of Scufalos loans outstanding was not the \$3,025,000 figure stated in the fact sheet, but was rather just under \$5 million and was comprised of the six dry cargo loan, the \$242,001 loan then outstanding and the May and the June loan. (Tr. 78, 81, 324-325, 437-438, 440-441, 445-449, 461, 546-548, 705; GX 12EE, GX 150, 154).

By the time of the closing on December 24, 1971, Metzger was admittedly aware that Tidal Marine was the purported seller of the vessels. Neither this fact nor the fact that Tidal Marine would be operating the vessels after the closing was disclosed to the Loan Committee. The fact that Tidal Marine, which prior to this time had been rapidly expanding, suddenly decided to sell two vessels would have been relevant to the Loan Committee's decision approving the loan. (Tr. 704, 863-869).^{*} Amanatides, Naslas and Paul Katritsis, whom Metzger knew at the time to be related to Amanatides, attended the closing, the latter two signing closing documents on behalf of the borrowing corporations. Tidal Marine's attorney, James Hanlon, once again represented the borrowing corporations in connection with this transaction. Scufalos, however, was not present.^{**} (Tr. 560, 615, 632, 834-835, 870; GX 40).

G. The Short Term Loans

In addition to the ship purchase loans, the officers of the Ship Loan Department authorized a great number

^{*}In his grand jury testimony, Metzger admitted that he knew that charterhire from the Tropis and Tekton—purportedly Scufalos vessels—were at times being used to make repayments on Tidal Marine loans. (Tr. 565-567).

^{**}Guarantees were submitted to the bank by both Amanatides and Scufalos. Scufalos had previously signed blank guarantees on NBNA forms for Amanatides and was not aware that Amanatides had used them for this purpose. (Tr. 228-229).

of short term loans to Tidal Marine, its subsidiaries and its affiliates during 1971-72.* These loans, which aggregated approximately \$897,650 between August 27, 1971 and March 20, 1972, were made without obtaining the approval of the Loan Committee and were consequently in violation of the bank's procedures.** On March 6, 1972 alone, Metzger participated in the approval of such short term loans in an amount in excess of \$400,000. (Tr. 97, 714-715, 756-757; GX 153).

Most of these short term loans were repaid on March 13, 1972 from the proceeds of two \$150,000 twenty-one month loans approved for that purpose by Spartalis, Metzger and Shevlin. These loans were also made without the approval of the Loan Committee. The twenty-one month term for these loans was necessary because Tidal Marine was not in a position to repay the loans any earlier. (Tr. 96-98, 714-715, 756-757, 930).

An additional short term loan in the amount of \$326,563 was made to Galaxy Steamship, a Tidal Marine subsidiary, on May 16, 1972, to prevent default on the third quarterly installment on the six dry cargo loan, which was ostensibly a Scufalos loan. (Tr. 88-89; GX 154).*** Metzger admitted in the grand jury

* See GX 153 in Appendix, *infra*, for a listing of all such short term loans. The reference on GX 153 to "Bank Officers" refers to the officers who signed documentation as either the recommending or approving officer for a given loan. The officers' names are abbreviated as follows: M refers to Metzger, SH to Shevlin and SP to Spartalis. (Tr. 90-91).

** The amount of loans already outstanding to Tidal Marine greatly exceeded the lending limits of Metzger, Spartalis and Shevlin. (Tr. 714).

*** The second quarterly payment on the six dry cargo loan had been covered largely by the proceeds which Tidal Marine received from the sale of the vessel Tachys and came to the bank directly from the account of Tidal Marine's subsidiary, Galaxy Steamship. (GX 154).

that he was involved with the preparation of the note for this loan. (Tr. 474-475). Metzger also admitted that when this loan was made he knew that Tidal Marine was not in good financial condition. Moreover, while Metzger said that he would not have made the loan unless he knew that specific freights had been earmarked for repayment, this loan was not repaid from this source. (Tr. 484; GX 154).

In his grand jury testimony, Metzger explained that he made these short term loans without authorization because he had been told by Spartalis that the bank's lending limits only applied to ship loans secured by first preferred ship mortgages and in the case of all other loans, approval from the Loan Committee was not required.*

H. Tidal Marine on the Brink of Collapse

By the late spring and early summer of 1972, Metzger knew that Tidal Marine was operating with deficient

* In the grand jury Metzger was asked the following question:

"Q. According to your version of the authority which you felt you had, you felt you had authority to lend the bank's money without security, to lend the bank's money with security which had already been pledged to another loan, to lend the bank's money against insurance claims, but you didn't have authority to lend it against the best kind of collateral—the best kind of collateral there was—which was a first preferred ship mortgage. That doesn't make sense to me."

And gave this response:

"A. Unfortunately, that is the way it had been set up."
(Tr. 764).

Bachman testified, however, that the rules governing the extension of credit stated that lending limits applied to all extensions of credit, and that these rules had been circulated throughout NBNA, where Metzger had been employed since the early 1960's. (Tr. 693).

working capital and was on the verge of collapse. (Tr. 766-769, 877-880, 923-933). Its plight was exacerbated by a seriously depressed shipping market. (Tr. 367, 928). During April, 1972 Amanatides, Livas and Naslas met with Spartalis, Metzger and Shevlin at Oscar's Delmonico Restaurant in New York City. Livas thanked the three bankers for their help in the past and said that Tidal Marine still had a future, but would require additional financial help during the coming year. (Tr. 931-932). About a month later, Amanatides and Naslas again met with Spartalis, Metzger and Shevlin at Delmonico's. At that time Amanatides explained that Tidal Marine's condition had become more serious and that the company was having working capital problems. Amanatides told Metzger that Scufalos was not doing well either and that if Tidal Marine collapsed, Scufalos would also "go down." At this meeting Amanatides requested a moratorium on monthly loan payments. (Tr. 932-933).

The three ship loan officers agreed among themselves to go along with the requested moratorium and decided that this matter would not be brought to the Loan Committee's attention. They believed that if Tidal Marine could secure a public financing from Shearson, Hammill & Co., a lot of delinquencies would be cleared up and that it would be suicidal for the officers to consult the Committee at that point. Subsequent to this decision, monthly payments into the cash collateral accounts were suspended for both the Tidal Marine and the Scufalos loans and funds already in these accounts were released. The Loan Committee was not informed of these drastic measures. (Tr. 933-934).

In June, Metzger told Shevlin that Amanatides had called him to say that Tidal Marine was in trouble and that Amanatides and Livas would be coming into the bank to see them. When they arrived they requested a

loan of several million dollars. Shevlin rebuffed this request, while Metzger attempted to soothe Livas and Amanatides. (Tr. 934-935). That same month, June, 1972, Metzger agreed to release NBNA's right to nearly \$1 million in Tidal Marine insurance claims at Livas' request.* (Tr. 582-584; GX 122). Again, this was done despite Tidal Marine's serious financial plight and without the knowledge or authorization of the Loan Committee. (Tr. 584-585, 932-933).

I. Tagma**

In April, 1972 Metzger recommended approval of a \$3.2 million loan on a vessel named Santa Isabella which was to be renamed the Tagma. Although this loan had been requested by Amanatides, and Metzger had received some of the details of the transaction from Naslas, a Tidal Marine officer, the loan fact sheet which Metzger submitted to the Loan Committee recited that this was a loan to enable Scufalos to purchase the Tagma. However, Scufalos did not have any interest in the Tagma and had no contact with Metzger concerning this loan.*** (Tr. 568-571, 705-706; GX 45A). The loan fact sheet also stated that the amount of outstanding Scufalos loans was then slightly in excess of \$4.4 million, when in fact

* On the same day that Metzger released these claims, he allowed a \$3.2 million loan to close on the Tagma. (See *infra*).

** Metzger was convicted of misapplication of bank funds, in connection with this loan, as charged in Count 77 of the indictment.

*** Scufalos was, however, present at the closing which took place in London on June 16, 1972, and executed a certificate stating that he was the sole shareholder of the borrowing corporation as well as a personal guarantee (Tr. 232). He pleaded guilty to making a false statement to NBNA with respect to the certificate.

the amount was actually in excess of \$9.5 million, all made within the preceding nine months. (Tr. 571; GX 45A, 150). Moreover, it represented that the vessel was on a three year charter to Montecatini Edison, to follow the expiration of a short term charter. This was false. Metzger admitted in the grand jury that he received this information concerning the charter from Naslas of Tidal Marine. (Tr. 576-578, 706-707; GX 45A).

In addition, the approval of the Committee was made without the benefit of certain other facts which Metzger concealed. These facts were: (1) the information that repayments on prior Scufalos loans had not been made from charterhire as had been contemplated at the time the loans were made, but rather from the proceeds of unauthorized loans later repaid by Galaxy Steamship;* (2) that the bank had in April, 1971 and February, 1972 closed two transactions in which the charter parties submitted by Tidal Marine turned out to be fictitious and (3) that Tidal Marine was to be operating the Tagma after the closing. (Tr. 82-89, 460-463, 592, 606-608, 708-709, 895,927; GX 11, 154). Metz-

* In fact, as late as July 31, 1972, when the seriousness of the Tidal Marine situation had become apparent, Metzger claimed, in a memorandum to the President of NBNA, that the six dry cargo loan was being serviced by charterhire from those vessels. In his grand jury testimony Metzger admitted that he knew that was not the case, and explained that his intent had been merely to say that the charterhire should have been sufficient to service the loan. The language used in the memorandum, however, was as follows:

"To the date of this memo, no loan ever extended to the Scufalos group has ever been in default. All freights on all of the vessels are coming directly to the National Bank of North America. The freights do service the debt on each vessel."

(Tr. 460-464, 783-788; GX 2).

Freights and charterhire are synonymous.

ger also failed to inform the Loan Committee that Scufalos was again fronting for Tidal Marine, which was the true purchaser of the Tagma and borrower on the loan, and that both were financially *in extremis*. (Tr. 229-232, 484, 932-933).

In preparing for the closing on this loan, Metzger made a departure from what had been customary procedure when he instructed counsel to conduct an investigation of the charter parties which were said to be attached to the Tagma.

Metzger had good reason to take this precaution since he had just learned in March, 1972 that the charter submitted in connection with the Tachys loan was not in existence and had agreed with Spartalis and Shevlin that this would not be disclosed to the Loan Committee, but would be handled by giving Tidal Marine 90 days to solve this problem. (Tr. 926-928).*

The response that the bank's counsel received from Italian counsel was that, contrary to Naslas' representations, Montecatini Edison had no record of having entered into a charter on the vessel. When asked about this in the grand jury Metzger admitted that he felt that Naslas had misled him about the charter. (Tr. 537-538, 577-579, 591).

Nevertheless, without telling anyone outside the Ship Loan Department about this latest Tidal Marine deception, Metzger permitted the loan to close in June, 1972, on the basis of a purported charter party with P. Wigham-Richardson, the firm of insurance brokers who had

* Metzger also failed to tell the Loan Committee that Tidal Marine had submitted another fictitious charter in April, 1971 in connection with the Tama loan. (Tr. 895-896).

supplied appraisals in connection with this transaction and all of the previous Scufalos ship purchase loans. Contrary to bank policy, Metzger did not clear this substitution with the Loan Committee. While Metzger claimed in the grand jury that he had received approval for this change from Gerald Bachman, a senior vice-president of the bank, Bachman denied at trial that this had occurred. (Tr. 69, 591, 599, 706-708; GX 33, 39, 45).*

J. The Final Three Loans **

On July 6, 1972 Metzger approved three loans aggregating \$365,000 to three companies purportedly under the control of Scufalos. The proceeds were paid directly, not to the allegedly Scufalos companies, but to the account of Galaxy Steamship at NBNA. At the time these loans were made, Metzger knew that NBNA officials were concerned about the difficulties Tidal Marine was encountering. He nevertheless made these loans, contrary to bank policy, without the approval of members of the Loan Committee. (Tr. 101, 714-715, 776, 780, 881, 935-936; GX 1J). Metzger told Shevlin that he was being pressured into making payments to Scufalos' partners, and that if such payments were not made those individuals would "blow the whole thing up." (Tr. 956). Metzger also told Shevlin that while the purpose of the loans was to make payments to Scufalos' partners, he was going to portray the loans as being for the purpose of paying trade creditors. Shortly after the loan was made one of Scufalos' partners, Dr. Joannides, re-

* The P. Wigham-Richardson "charter" ultimately turned out to be an option unilaterally terminable by P. Wigham-Richardson. (Tr. 1219-1220).

** Metzger was convicted of misapplication of bank funds in connection with these loans, as charged in Counts 40-42 of the indictment.

ceived money that had been owed to him by Tidal Marine. (Tr. 234, 235, 936).*

Scufalos and Amanatides met with Metzger in connection with this loan. (Tr. 234, 774-775). However, Amanatides made the presentation to Metzger. (Tr. 234). Scufalos did not even know whether the loan was in fact made.

In his grand jury testimony and in a deposition taken by NBNA, Metzger gave inconsistent explanations for these loans. At one point he insisted these loans were made to Scufalos for the purpose of helping Tidal Marine cover its obligations to pay insurance premiums. (Tr. 773-782, 879-880). However, at another point Metzger indicated that while the loans were made to what he believed to be Scufalos entities, the loans were made to enable Tidal Marine to pay Scufalos money which it owed to him. (Tr. 776, 843-844, 880). Metzger further explained in the grand jury that he made these loans because he had been assured that specific sources for repayment had been earmarked for such purpose. These sources, however, had already been pledged to the bank in connection with other loans. (Tr. 779-780). The documentation submitted to Metzger in connection with this loan included (1) a letter from Amanatides specifically authorizing repayment of the loans from the freights of certain vessels—including, among them, the Tropis and Tekton which purportedly were Scufalos' vessels (GX 39)** and (2) a promissory note for Pisces

* This money was owed by Tidal Marine as part of the purchase price of the thirteen ships sold to Tidal Marine in March, 1971. (Tr. 205-207, 936).

** This letter from Amanatides was written on Tidal Marine stationery and signed on behalf of Tidal Marine by Harry Amanatides. (GX 39).

Navigation Corporation signed by Amanatides (GX 1A).*

The Defense Case

A. Summary

Metzger contended that he was unaware of the true nature of the Scufalos loans until after Tidal Marine collapsed, but that in any event Tidal Marine and Scufalos represented a single "common pot." The understatements on the loan fact sheets as to the amount of loans Scufalos then had outstanding were explained as being the result of secretarial error. In the case of the short terms loans, Metzger contended that these loans were within his lending authority, as such authority had been explained to him by Spartalis. Metzger denied accepting bribes from Tidal Marine—although he did admit that he received "gifts" from customers of NBNA as well as from customers of his present employer—and he presented several character witnesses.

B. The Incorrect Loans Fact Sheets

Marta Kwiatkowski, Spartalis' secretary at NBNA and Metzger's secretary at the time of trial,** testified that she typed loan fact sheets at Metzger's direction. She said that when Metzger gave her the facts sheets to type he would leave the amount of prior loans outstanding

* Scufalos was not even an authorized signatory for the accounts of either Aries or Pisces Navigation Corporations at NBNA. In the case of both of these accounts, the bank's records listed the address as being "c/o" Tidal Marine and Amanatides and Naslas as authorized signatories. (GX 103, 104).

** Within a period of six months, Kwiatkowski and Metzger both moved from NBNA to Irving Trust Co. (Tr. 1145-1146).

blank and it was her responsibility to ascertain the correct figure from various reports. Kwiatkowski testified that she was responsible for the understatement of prior loans outstanding, but that these inaccuracies were accidental and not at anyone's request. Metzger testified that he signed the fact sheets after they were typed and never realized that they contained errors. On cross examination Kwiatkowski testified that Metzger was solely responsible for the remainder of the substance of the fact sheets and that she typed whatever was given to her by him. (Tr. 1061-1071, 1073-1977, 1111, 1116-1118, 1121-1126, 1240-1242).

On cross examination, Kwiatkowski also admitted that while she claimed to have prepared the outstanding loan figures on all of the loan fact sheets for the Scufalos loans, she had told the grand jury that she did not have too much to do with Scufalos' company, Union Commercial. (Tr. 1127). Kwiatkowski also testified on cross examination that in order to determine what companies were related to a given borrower for purposes of obtaining the amount of prior loans outstanding she would have to check an index card listing. However, in the grand jury Kwiatkowski maintained that generally a bank officer would tell her the names of related borrowers. (Tr. 1101-1106). Kwiatkowski also admitted on cross examination that in August, 1973 she visited Spartalis, who had permanently left the bank in 1972, in Greece.* (Tr. 1136-1138).

C. The Scufalos Ship Purchase Loans

Metzger contended that he was not aware that the loans made in 1971-72 to Scufalos were actually loans to Tidal Marine. With respect to the August, 1971 loan on

* The demeanor of this witness—while a matter solely for the jury—is reflected by Judge Pollack's admonition to her not to laugh. (Tr. 1116).

the six dry cargo vessels, Metzger testified that he was initially approached for the loan by Scufalos, and that prior to Scufalos' telephone call he had not discussed this loan with anyone else. (Tr. 1305-1307). Metzger claimed that while Scufalos had requested a loan in the amount of \$3.8 million, Metzger agreed only to recommend a \$3.3 million loan. (Tr. 1315-16). Metzger admitted that as he was discussing certain aspects of the loan with Scufalos, Amanatides stopped in and made some comments concerning the vessels. (Tr. 1307-08). Metzger testified that although he knew that Tidal Marine had purchased certain vessels from Scufalos' company, he did not know that the six dry cargo vessels were among them. (Tr. 1324-1325). As for the charters, Metzger said that the Loan Committee merely requested him to receive confirmation from the principals that the vessels had been subchartered, a direction with which he said he complied. (Tr. 1321-1322). He stated that the proceeds of the loan were disbursed to and later transferred out of Eldorado Investments, Amanatides' company, at Scufalos' direction. (Tr. 219-220, 1326-1332).

Metzger testified that the loan on the May and the June was requested by a letter from one of the directors of Union Commercial and that he prepared the fact sheet on the basis of the information contained therein. (Tr. 1349).*

Metzger testified that he was told by Spartalis that Scufalos was purchasing the Tropis and Tekton and that Naslas of Tidal Marine could supply him with some of the details of that transaction. (Tr. 1370-1372). Metzger denied that he received any money in connection with this or any other loan and said that he had in fact attempted to prevent the Tropis and Tekton transaction from closing when certain required documents were not delivered, but was overruled by Spartalis. Metzger also

* Scufalos testified that the signature on the letter was not of any person connected with Union Commercial. (Tr. 227).

said that he insisted that half of the proceeds of the loan be placed in a special escrow account pending the delivery of certain other documents relating to the title of one of the vessels. (Tr. 1370-1380).

Metzger testified that Spartalis also assigned him the Tagma transaction and told him that it was a Scufalos deal and that he should contact Naslas for the details. (Tr. 1428-1431). Because of a prior problem with a Tidal Marine charter, Metzger instructed counsel to check on the validity of the charters which Naslas told him were on the vessel. Counsel could not confirm the existence of the Montecatini Edison charter, and Metzger ultimately approved the substitution of a charter from P. Wigham-Richardson. Metzger testified that this substitution was approved by Bachman. (Tr. 1432-1436, 1439-1443, 1572-1574).

D. The Short Term Loans

Metzger testified that pursuant to Spartalis' authorization, the normal practice in the Ship Loan Department was not to submit short term loans to the Loan Committee for approval. (Tr. 1176, 1179, 1290, 1296). As to the short term loans to Tidal Marine which he had authorized, Metzger claimed that generally he was asked to extend such loans by Spartalis and Shevlin and that consequently when a renewal was sought he would be the officer contacted. Metzger disclaimed knowledge of some of the short term loans for which he signed as the recommending or approving officer. Metzger denied that any of the Tidal Marine loans were made on his own initiative. (Tr. 1336-1339, 1344, 1354-1357, 1359-1360, 1368-1370, 1398-1400, 1398-1408). Metzger explained that some of the short term loans were approved over the signatures of all three ship loan officers so that each officer would be familiar with such loans should a problem arise. (Tr. 1397-1398).

Metzger said that the November 15, 1971 loan to cover the first installment of the six dry cargo loan was made because sufficient freights had not been deposited in the cash collateral account to cover the payment and Metzger had been told by one of Scufalos' partners that he was uncertain as to why this had happened.* (Tr. 1365-1366).

Metzger testified that he refused to approve the May 16, 1972 loan to Galaxy Steamship used to meet the third quarterly payment on the six day cargo loan, since he did not know the circumstances under which it was made.**

E. The Final Three Loans

Metzger admitted approving loans aggregating \$365,000 to Eltanin Navigation Corporation, Aries Navigation Corporation and Pisces Navigation Corporation on July 6, 1972. Metzger testified that Scufalos asked him to extend the aggregate amount of the three loans to Tidal Marine or one of its subsidiaries for the purposes of enabling Tidal Marine to make certain insurance premium payments. Metzger said he refused to make the loans to Tidal Marine but agreed to lend the

* On cross examination, Metzger explained that this loan was an "emergency" loan since if it had not been made, the first quarterly repayment on the six dry cargo loan could not have been made and somehow suggested that this would have caused difficulties for the bank. (Tr. 1528).

** However, in his grand jury testimony Metzger admitted that he was involved with the preparation of the note for this loan, although he did not recall "specifically making the loan." (Tr. 474-475). In addition, Metzger told the grand jury, while he knew that Tidal Marine was not in good financial condition when this loan was made, he knew at the time the loan was made that it was to be repaid from specific freights. The loan, however, was not repaid from this source. (Tr. 484; GX 154).

money to Scufalos' companies so Tidal Marine vessels would not be operating without insurance coverage. Metzger testified that he made certain that these loans were secured by specifically pledged collateral. (Tr. 1456-1459). On cross examination, Metzger admitted making these loans on the very same day they were requested without the Loan Committee's approval because he regarded them as being for an emergency situation. (Tr. 1558-1562).

F. Gratuities From Bank Customers

Metzger denied striking an agreement with Amanatides to accept payoffs as a quid pro quo for the extension of loans and stated that he had never received any money from bank customers. Metzger did admit on cross examination, however, that he had accepted gifts from customers of both NBNA and his present employer such as jewelry for his wife and a color television set. Metzger denied that the Martinos stock was a gift, stating instead that it was an investment which he had made for \$100. Metzger also stated that when he purchased the stock in May, 1972, the particular vessels in which he had invested were not the subject of any loans at NBNA.* (Tr. 1413-16, 1444-1447, 1451-1452, 1483-1484, 1488, 1491-1493).

Metzger said that the reason for the installation of a safe in his basement had been a plethora of robberies in his area, the unavailability of safe deposit boxes and his concern for the safety of his wife's jewelry, which, he said, was worth approximately \$7,000-\$8,000.** (Tr. 1419-

* The loan fact, signed by Metzger himself, indicated that this testimony was false. (GX 183, 184).

** Metzger's neighbor and fellow bank employee Robert Jones testified, however, that during 1971-72 he was not aware of there being a high level of crime in the area where he and Metzger both lived. (Tr. 163).

1420, 1480). Metzger said that some of his wife's jewelry had been a gift from his late uncle who had been in vaudeville and, Metzger said, died in the early 1960's. (Metzger's wife testified that the uncle died in the late 1960's). (Tr. 1421, 1476, 1622). On cross examination, Metzger said that this jewelry had not passed through his uncle's will, but rather had been received from his mother and that no gift tax return had been filed. Other jewelry, he said on cross examination, had been purchased over the years, but he could not produce any receipts to document any such purchases. (Tr. 1475-1479).

When asked on cross examination about the availability of safe deposit boxes, Metzger explained that it was inconvenient to keep his wife's jewelry in a safe deposit box at NBNA and the only bank in his neighborhood where he made an inquiry did not have any safe deposit boxes available at the time. (Tr. 1478-1489). Metzger admitted paying for the safe in cash from money which he usually kept in an envelope at his home for use in special projects. (Tr. 1420).

A R G U M E N T

The Evidence was Sufficient to Support the Jury's Verdicts of Guilt.

The only claim raised by Metzger is that the evidence was insufficient as a matter of law to support the jury's guilty verdicts. Preliminarily, however, it must be noted that his entire argument is predicated upon an erroneous view of the law. The applicable test is "whether upon the evidence, giving full play to the right of the jury to determine credibility, weigh the evidence, and draw justifiable inferences of fact, a reasonable mind might fairly conclude guilt beyond a reasonable doubt." *United States*

v. *Taylor*, 464 F.2d 240, 243 (2d Cir. 1972). Metzger's contention that this Court must be satisfied, "where the evidence is exclusively circumstantial, that the inferences of innocence are not so strong that a rational evaluation makes it impossible to conclude that a reasonable doubt does not exist," Brief at 30, has been repudiated by the Supreme Court in *Holland v. United States*, 348 U.S. 121, 139-140 (1954), and by this Court in *United States v. Taylor*, *supra*, at 244; *United States v. Grunberger*, 431, F.2d 1062, 1066 (2d Cir. 1970). See also *United States v. Pfingst*, 477 F.2d 177, 197 (2d Cir.), *cert. denied*, 419 U.S. 941 (1973). This Court has also rejected the position that "[a]n inference may not properly be relied upon in support of an essential allegation if an opposite inference may be drawn with equal consistency from the circumstances in proof." *United States v. Taylor*, *supra*, 464 F.2d at 244.

Equally as important, Metzger's attempt to invoke the "two inference rule" repeatedly rejected by this Court overlooks the fact that the evidence relied upon by the Government at trial was direct as well as circumstantial. When viewed against the applicable standard of law, the evidence supporting the jury's guilty verdicts was overwhelming and Metzger's contention to the contrary is nothing but an attempt to persuade this Court to accept arguments presented at trial which the jury properly found wanting.

The four counts of misapplication on which Metzger was convicted concerned a loan made for the purchase of the Tagma which closed on June 16, 1972 (Count 77) and three short term loans made on July 6, 1972 (Counts 40-42). Those loans, however, were but the culmination of a long series of events which established that Tidal Marine, with the assistance of Metzger, was engaged in

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a massive scheme to defraud the bank. Indeed, the irregularities and concealments established in connection with the June and July, 1972, loans were but part of a pattern of deception and corrupt conduct which Metzger engaged in over a period of months for the purpose of inducing the bank to make extraordinary risky loans to unreliable borrowers.

The stage was set in July, 1971, when the internal bank reviewers conducted a survey of Tidal Marine loans and found the overall relationship disturbing in view of the size of the loans, Tidal Marine's extremely rapid rate of expansion and the lack of a sufficient "track record" to justify the size of the loans (GX 100 A). In August, at a meeting attended by Metzger, the Loan Committee decided that in view of the loans already outstanding to Tidal Marine and its unstable financial condition no more loans were to be made to it at that time.

Thus as early as August, 1971, Metzger was aware that Tidal Marine was in poor shape and that the Loan Committee was not prepared to take the risk of lending it any additional money. In an attempt to circumvent the Loan Committee's restriction, Metzger and Spartalis over a period of less than a year caused approximately \$13,000,000 to be loaned ostensibly to Mark Scufalos but in fact to Tidal Marine subsidiaries which received the proceeds of the loans and owned the ships which provided security for the loans. These facts were, of course, concealed from the Loan Committee.

The earliest of these purported Scufalos loans was presented to the Loan Committee by Metzger in July, 1971, as a proposal to finance Scufalos' purchase of his partners' interest in six dry cargo vessels. The evidence established, however, that in fact Tidal Marine had pur-

chased these ships from Scufalos' company five months earlier, and that the borrowing corporations were subsidiaries of Tidal Marine. Indeed, Metzger admitted knowing that Scufalos had sold a number of ships to Tidal Marine but claimed he did not know that these six were among them. (Tr. 798-802).

In his handling of this loan, Metzger began weaving a pattern of deception and concealment which continued right up to the date of Tidal Marine's collapse. A number of circumstances were adduced at trial which demonstrated that Metzger was fully aware that the six dry cargo loan was nothing but a Tidal Marine venture. For example, Harry Amanatides, the president of Tidal Marine, discussed with Metzger figures concerning the operational expenses and revenues from the six ships which were the subject of this purported Scufalos loan. Amanatides also guaranteed the loan, a fact about which the Loan Committee was not apprised in the loan offering or fact sheets submitted to it.* Moreover, the initial appraisal which was submitted to Metzger in support of this purported Scufalos loan was addressed to Galaxy Steamship, a subsidiary of Tidal Marine. Indeed, although Metzger claimed to believe that the purported purpose of the loan was to enable Scufalos to buy out his partners, he admitted that at the time he had no idea how much Scufalos required to accomplish that end, an incredible state of affairs if he really believed that the money was being borrowed for that purpose. (Tr. 807-809).

* Metzger explained lamely in the grand jury that after the loan had been approved by the Committee on Scufalos' guarantee alone, he had been offered Amanatides' guarantee and had accepted it because "if someone is going to offer their guarantee on the transaction...I was not going to reject additional collateral to the bank." (Tr. 425). The jury could certainly reasonably infer that Metzger could not believe that Amanatides would be guaranteeing a transaction in which he had no interest.

The closing provided further evidence that the loan was in fact a Tidal Marine transaction. James Hanlon, Tidal Marine's attorney, signed as attorney for the borrowing corporations and Paul Katritsis, nephew of Amanatides, signed documents as an officer of the borrowing corporations. Furthermore, Metzger ordered the proceeds of the loan to be disbursed not to Scufalos, the purported borrower, but to "Eldorado Investments c/o Mr. Harry Amanatides." Eldorado was a private company used by Amanatides.

From the facts enumerated above, in addition to other evidence presented at trial, a jury could reasonably infer that as early as August 1971 Metzger was aware that Scufalos was merely a front for Tidal Marine and that he concealed this as well as other relevant facts from the Loan Committee. This pattern of deception was repeated by Metzger in a number of subsequent loan transactions in late 1971 and the first part of 1972 in which Scufalos served as a front for Tidal Marine. Significantly, it was at about the time of the six dry cargo loan that Amanatides reduced his dealing with John Shevlin, who worked on the Tidal Marine account, and began dealing with Metzger, who handled the Scufalos account. (Tr. 898).

Shortly after the closing of the six dry cargo loan, Metzger began engaging in another pattern of concealment and deception for the purpose of preventing the Loan Committee from learning that the six dry cargo loan and other Tidal Marine and Scufalos loans were not being repaid in the manner the bank intended. The originally proscribed method of repayment of the six dry cargo loan was the same as that generally followed by the bank in connection with ship purchase loans. Metzger instructed the Loan and Discount Department that each month a sum of money representing one-third of

the quarterly loan installment was to be transferred from the borrower's regular checking account into a cash collateral account.* Every three months, a sum representing the quarterly installment due was to be transferred from this account to the bank. In September, the monthly payment of \$121,000 was transferred from the checking account to the cash collateral account. (GX 154). In October the trouble began. The checking account from which the payments were to be taken was in overdraft throughout October, with Metzger's approval, and consequently no monthly transfer could be made into the cash collateral account. (Tr. 440-442). It was also apparent that no charterhire was coming in from Transoceanic, the purported charterer of the six dry cargo vessels.

On October 15, 1971, with full knowledge that the borrower's regular account had been in overdraft from the beginning of the month and that no payment of charterhire had been received, Metzger proposed another loan of \$1,700,000 on two vessels, the May and the June. Again, Metzger represented to the Loan Committee that the borrower was Mark Scufalos, in this instance joined by A. Ion Livas. In fact, as in the case of the six dry cargo vessels, these two ships were among the thirteen which Scufalos had previously sold to Tidal Marine. Metzger admitted in grand jury testimony introduced at trial that he had absolutely no contact with Scufalos in connection with this loan transaction. In addition, according to the loan fact sheet submitted by Metzger,

* The source of these funds was to be the charterhire earned by each vessel on its purported time charter with Transoceanic, the assignment of which to NBNA was a condition of the loan.

the May and the June had a total value of \$2,250,000. Metzger failed to inform the Loan Committee, however, that a statement submitted to the bank, purportedly from Mark Scufalos, reflected the total value of the ships as \$1,400,000, which was less than the amount of Metzger's proposed loan. The loan fact sheet also stated that the total amount of loans outstanding to the "Scufalos Group" was "slightly in excess of \$2,800,000," when in fact it was at least \$3,179,000. Once again Amanatides guaranteed the loan and Tidal Marine's attorney signed loan documentation as the attorney for the borrowing corporations. Moreover, Metzger never informed the Loan Committee up to the closing of the loan on November 3, 1971, that the bank had not received the October payment of charterhire from Transoceanic on the six dry cargo vessels, despite the fact that Transoceanic was also the purported charterer of the May and the June. (Tr. 855-856). The evidence strongly supported, if not compelled, the inference that Metzger concealed from the Loan Committee that once again Scufalos was only acting as a front for Tidal Marine and that the loan, whoever the borrower was, was not a credit worthy venture.

The inability of the borrower, whether considered to be Scufalos or Tidal Marine, to meet its obligations with respect to the repayment of the six dry cargo loan became even more apparent in the middle of November when the first quarterly payment on that loan was due. Since neither the October nor November monthly payments of charterhire had been received by the bank, as of November 15, 1971 there were insufficient funds in both the borrower's checking account and in the cash collateral account to make the quarterly repayment of \$275,000. (Tr. 443-46; GX 12L, 12M, 12Q, 154). In order to provide funds for this repayment, Metzger made an unauthorized short term loan of \$242,001 to the Scufalos borrowing

corporations. This loan was unauthorized because (1) Metzger had no authority to make a loan in this amount without the approval of the Loan Committee and (2) it was contrary to the policy of the bank to make a new loan to a borrower for the purpose of meeting payments on a loan already outstanding. Metzger never even informed the Loan Committee of the borrower's inability to meet its obligations on the six dry cargo loan. It could be reasonably inferred from the evidence that Metzger did not permit the six dry cargo loan to become delinquent or inform the Loan Committee of the existence and purpose of the \$242,001 loan because if it had found out that the charterhire securing the six dry cargo loan had not been received by the bank, Metzger would not have been able to use purported loans to Mark Scufalos as a device to loan any more money to Tidal Marine.

The circumstances surrounding the \$242,001 loan provided further evidence that Metzger was both aware of and a participant in the pattern of deceit being perpetrated on the bank in connection with the loans to Scufalos which were in fact to Tidal Marine. Although the loan was ostensibly a Scufalos loan, it was actually to cover Tidal Marine's unpaid indebtedness. In fact the note for the loan, which Metzger initialed, was signed by Solomon Halpern, the treasurer of Tidal Marine (GX 12ee). Moreover, the loan was repaid not from charterhire on the six dry cargo vessels but by Galaxy Steamship, the chief operating subsidiary of Tidal Marine.

By December, 1971, it was clear to Metzger beyond any doubt that the so-called Scufalos loans were in fact Tidal Marine loans and, even more importantly, that whatever the identity of the borrower, the charterhire securing the loans was not coming in and the loans were not being repaid. By this time, he had also approved a loan beyond his authority and concealed critical facts

from the Loan Committee in order to obtain its approval for loans. Despite his experience with Tidal Marine or "Mark Scufalos," in December, 1971, Metzger proposed to the Loan Committee an additional loan of \$5,500,000, purportedly to Scufalos to enable him to purchase two ships named the Tropis and the Tekton. In fact, however, the ships were owned and continued to be owned by Tidal Marine, and the loan was nothing more than a refinancing. The loan closed on Christmas Eve, 1971, following Loan Committee approval.

Metzger repeated a familiar pattern of deception in order to obtain Loan Committee approval. Although Metzger knew that Tidal Marine would be operating the ships and had had no communication whatsoever with Scufalos in connection with the loan but rather dealt with Costas Naslas, a Tidal Marine officer in charge of operations of the Tidal Marine fleet, he nevertheless represented to the Loan Committee that this was a Scufalos venture (Tr. 311, 554-555). In addition, Metzger represented in a loan offering sheet signed by him that the amount of loans outstanding to Scufalos was \$3,025,000, when in fact it was close to \$5,000,000, a balance created by three loans handled by Metzger in the preceding four months. Moreover, Metzger signed a loan fact sheet stating in reference to Scufalos that, "Mark is a very conservative operator and has always lived up to his obligations here at National Bank of North America." (GX 34A). This statement, of course, was false, even if Metzger believed, as he would later claim, that Scufalos was the borrower. The bank was not receiving charterhire from the six dry cargo vessels, and Metzger had to make a new loan of \$242,001 in November, still on the bank's books when Metzger signed the loan fact sheet, for the sole purpose of enabling Scufalos to make the first quarterly repayment on the six dry cargo loan. The bank, if informed of the repayment problem, would undoubtedly have been re-

luctant to loan Scufalos \$5,500,000 when he had been unable to make a quarterly payment of \$275,000 a few weeks earlier.

The closing followed the familiar pattern. Harry Amanatides, president of Tidal Marine, guaranteed the loan and Paul Katritsis, known to Metzger as the nephew of Amanatides, signed as the president of the borrowing corporations. Scufalos was not present (Tr. 834-835). Interestingly enough, \$120,000 of the proceeds—contrary to the loan's purported purpose—was applied to meet a monthly installment on an outstanding "Scufalos" loan.

An additional event occurred during late 1971 which made it clear beyond peradventure of doubt that Metzger's actions were not the result of inadvertence but those of a man who was serving the interests of Scufalos and Tidal Marine rather than those of the bank. In early November Amanatides reached an agreement with Metzger, Shevlin and Spartalis, the three officers in the NBNA Ship Loan Department, pursuant to which they would receive \$70,000 each in exchange for recommending four loans, two of which were to be the Tropis and Tekton loans. Indeed, Metzger and Shevlin each received the first \$10,000 installment from Amanatides right on the premises of the bank on the day of the Tropis and Tekton closing. By April, 1972, he and Shevlin were to receive \$45,000 apiece, a very substantial payoff but less than the hundreds of thousands of dollars paid to their superior, Spartalis, by Amanatides and Livas.* In addition to the Tidal Marine payments, the

* Although the jury chose to acquit Metzger of charges in connection with the receipt of these payments, the evidence of his participation was strong. The acquittal of a defendant on some counts, of course, does not preclude reliance on evidence relevant to those counts in evaluating the sufficiency of the evidence as to other counts. *United States v. Lubrano*, 529 F.2d 633, 636 n.1 (2d Cir. 1975); *United States v. Finkelstein*, 526

[Footnote continued on following page]

evidence established that Metzger accepted stock in a shipping company for which he had approved a loan of a large sum of the bank's money, a gold necklace for his wife from another bank customer and a color television from a customer at the Irving Trust Company, where he was employed after leaving NBNA. The total picture which emerged was of a corrupted individual who acted contrary to the best interests of the bank which employed him.

During late 1971 and early 1972, Metzger was involved in another series of transactions which provided further evidence of Tidal Marine's rapidly deteriorating financial condition. He participated in making a series of short term loans exceeding a total of \$800,000, which loans were on their face to Tidal Marine and its subsidiaries and affiliates. Not only were these loans unauthorized because of the failure to submit them to the Loan Committee, but they were in most cases unsecured or secured by collateral already pledged in connection with other loans. (GX 1, 41A, 41B, 47A, 47B, 49, 52AA, 53A, 55A). Moreover, Metzger had no idea of the specific manner in which these loans were to be repaid or what their purpose was, other than that they were required for working capital purposes or to meet "emergencies." * (Tr. 758-760). In addition, most of these loans were repeatedly renewed or "rolled over" when they became due—a pattern strongly suggesting that Tidal Marine did not have the funds to repay the loans. Finally, in March, 1972, Metzger participated in the approval of two \$150,000 loans repayable over twenty-one months which were used to repay outstanding short term loans. These loans again were not submitted to the Loan Committee as required by bank regulations. As Shevlin

F.2d 517, 527 (2d Cir. 1975), *cert. denied sub nom. Scardino v. United States*, 44 U.S.L.W. (May 3, 1976); *United States v. Sisca*, 503 F.2d 1337, 1344 n.9 (2d Cir.), *cert. denied*, 419 U.S. 1008 (1974).

* Metzger interpreted the term "emergency" quite liberally. (Tr. 1528).

testified, these loans were made for twenty-one months because given Tidal Marine's financial condition there was no possibility of repayment before the expiration of that period. (Tr. 930). In addition to Tidal Marine's persistent need for short term loans, its precarious financial state was also evidenced by frequent overdrafts in its accounts. (Tr. 321-323).

A. The Tagma Loan—Count 77

By the time Metzger recommended a loan for \$3,200,000 on the Tagma, one of the charges of which application in connection with which he was convicted (Count 77), he had full knowledge that both Tidal Marine and Scufalos were in financial difficulty, that Scufalos had not been meeting his loan repayment obligations, and that Scufalos had been fronting for Tidal Marine in an attempt to circumvent the bank's restriction on additional loans to Tidal Marine.* In addition, Metzger had concealed this and other critical information from the Loan Committee and had participated in a number of unauthorized loan transactions in a further attempt to conceal Tidal Marine's desperate financial conditions.

Metzger also knew but had concealed from the Loan Committee that Tidal Marine had made fraudulent representations in connection with the charters securing two other Tidal Marine ship loans. During the spring of 1971, Spartalis, Shevlin and Metzger learned that the charter securing a loan on the Tidal Marine vessel Tama was nonexistent.. Although the loan was ultimately removed from the bank, the Loan Committee was never informed of the reason for this. A similar problem occurred in connection with a loan made in February, 1972, on the Tachys, one of the four ships on which Metzger, Spartalis

* Metzger admitted he was aware of the close relationship between Scufalos and Tidal Marine, which he analogized to a "common pot." (Tr. 460-461).

and Shevlin agreed to recommend loans in exchange for payoffs. In March, 1972, Metzger learned that the charter securing this loan did not exist, that Tidal Marine had defrauded the bank and that the source of income relied upon to repay a \$4,500,000 loan was nonexistent. Again, the Loan Committee was not informed, though Metzger was aware during this period that the shipping market was in a state of extreme depression which made it very difficult to operate ships profitably, especially in the absence of long-term charters. As Metzger said, it was "one of the most horrible shipping markets that one had known." (Tr. 462).

Finally, by April, 1972, Metzger had received five payoffs totalling \$45,000 from officers of Tidal Marine and was a corrupted bank officer acting in fact as a representative of Tidal Marine.

On April, 28, 1972, Metzger recommended a \$4,200,000 loan to the Loan Committee for the purported purpose of enabling Scufalos to purchase the Tagma, but actually to provide Tidal Marine with funds for the purchase. In making this recommendation, Metzger concealed from the Loan Committee all the acts of deception and corruption and the indicia of lack of credit worthiness summarized above. Again, by Metzger's own admission, he had absolutely no contact with Scufalos prior to recommending the loan, but rather dealt with Naslas of Tidal Marine in connection with the loan. These were facts of which the Loan Committee was not informed. In addition, despite his awareness of the fraud which had occurred in connection with charters on other Tidal Marine operated ships, Metzger failed to inform the Loan Committee that Tidal Marine was to operate the ship, a fact which he admittedly knew. The inference is inescapable that Metzger was keeping from the Loan Committee all facts which might have revealed to it that Scufalos was only a front for Tidal Marine.

Perhaps more importantly, Metzger concealed from the Loan Committee the fact that an additional loan to Scufalos, even assuming he was the true borrower, was an extremely risky venture; that from October through April no monthly payments of charterhire had been received in connection with the six dry cargo loan; and that at most, only one payment had been received in connection with the May and June loans. Most of the repayments were made, either directly or indirectly, from the proceeds of additional NBNA loans through the account of Galaxy Steamship. Metzger not only concealed this fact from the Loan Committee, but falsely represented in his loan fact sheet that the amount in loans outstanding to Scufalos was \$4,400,000, when it actually approached \$10,000,000. It was on the basis of Metzger's representations, as well as his material omissions, that the Loan Committee approved the loan on April 28, 1972.

Between the Loan Committee's approval of the loan and its closing on June 16, 1972, a further event occurred which overwhelmingly established the extreme risk attached to the loan and the fraudulent nature of the representations made in connection with it. The Loan Committee had predicated its approval of the loan in part on the existence of a charter on the Tagma with Montecatini Edison. Metzger received this information, which he included on the loan offering sheet that he submitted to the Loan Committee, from Naslas of Tidal Marine. Metzger found out, however, subsequent to the Loan Committee's approval of the loan but prior to the closing that the charter was non-existent and that, as he admitted in the grand jury, Naslas had deceived him. Rather than informing the Loan Committee of this development, Metzger closed the loan in June on the basis of a representation that another charter existed with a company by the name of P. Wigham-Richardson, which also turned out to be fraudulent. Metzger, contrary to bank rules, never informed the Loan Committee of the substitution of charterers or of the fact that P. Wigham-Richardson was also

Tidal Marine's insurance broker and had supplied appraisals on a number of Tidal Marine ships.

In addition, Metzger failed to inform the Loan Committee of a further event of critical significance which occurred on May 16, 1972. At that time the third quarterly payment on the six dry cargo loan became due, but because no charterhire had been received, the funds were not available to pay it. Metzger proceeded to make an additional unauthorized loan of \$326,563 to cover this payment without even informing the Loan Committee. Moreover, the loan was made to Galaxy Steamship, a Tidal Marine subsidiary, while Metzger had always represented that this loan, like the six dry cargo loan, was a Scufalos venture.

Furthermore, during April and May, 1972, the top officers of Tidal Marine held two luncheon meetings with Metzger, Spartalis and Shevlin in which they informed them that both Tidal Marine and Scufalos were in desperate financial condition and that if Tidal Marine collapsed, Scufalos would also "go down". As a result of the pleas made at the second luncheon meeting, Metzger, Spartalis and Shevlin granted Tidal Marine and Scufalos a totally unauthorized moratorium on debt repayments.

Finally, Shevlin testified that Metzger and he were promised additional payoffs in exchange for making the Tagma loan. Indeed, the evidence compelled the conclusion that only a corrupted individual concerned solely with the interests of Tidal Marine could have recommended and closed the Tagma loan under the existing circumstances.

B. The July 6, 1972 Loans—Counts 40-42

Metzger was also convicted of misapplication in connection with the last three loans he extended on July 6, 1972, in the total amount of \$365,000 (Counts 40-42.).

The evidence supporting the jury's verdict was overwhelming. It established beyond any doubt that Metzger was wilfully acting contrary to the interests of the bank. In June, Amanatides called Metzger and told him that Tidal Marine was in trouble. By this time Metzger knew that senior bank officers were aware that Tidal Marine was not meeting its own obligations at the bank. (Tr. 936, 1566). On June, 16, which was also the date of the Tagma closing, with full knowledge that his superiors were seriously concerned with the Tidal Marine problem, Metzger, at the request of the chairman of the board of Tidal Marine, signed a letter releasing approximately \$1,000,000 of insurance claims which had been pledged to the bank as security for the Tidal Marine loans, without even informing the Loan Committee or his superiors. On July 6, 1972, Metzger followed a familiar pattern in extending an additional \$365,000 of the bank's money. Metzger admitted that without informing any of his superiors at the bank* he loaned \$115,000 to Eltanin Navigation Corporation, a corporation which owned one of the six dry cargo vessels, and \$125,000 each to two corporations which, respectively, owned the Tropis and the Tekton.

Metzger, of course, had no authority whatsoever to make these loans without the approval of the Loan Committee, and the repayment he purportedly took pains to provide for was from anticipated charterhire already pledged to the bank on other loans. In his deposition taken by the bank, Metzger admitted that the proceeds of the loans were credited to a subsidiary of Tidal Marine so that Tidal Marine could pay Scufalos money it owed him. (Tr. 843-844). Shelvin testified that Metzger told him that he would claim the loan was to meet trade payables, but it

* Although Metzger's defense generally stressed the claim that he was merely following the instructions of Gregory Spartalis, Spartalis was no longer present at the bank at the time of these loans and Metzger admitted during cross examination that he never discussed these loans with anyone. (Tr. 1558).

was actually to enable Tidal Marine to pay Scufalos' partners, who were prepared to "blow the whole thing up" if they were not paid money owed to them by Tidal Marine as part of the purchase price of the thirteen ships sold to Tidal Marine in March, 1971. The evidence established that this was in fact the purpose to which the proceeds of the loan were put. In other words, at a time when Metzger's superiors, who knew far less about the gravity of the situation than Metzger, were desperately concerned about how the bank could recover millions of dollars loaned to Tidal Marine and Scufalos, Metzger loaned yet additional funds to Tidal Marine so that it could pay its debts to Scufalos' partners. The Government submits that there could be no better evidence that Metzger was acting exclusively in the interests of Tidal Marine to the detriment of the bank.

Metzger's state of mind was also established by the July 31, 1972, memorandum Metzger wrote to the president of the bank when the bank finally discovered that the Scufalos loans were actually Tidal Marine loans. After recounting the history of the Scufalos loans (but conveniently omitting the May and June loan), Metzger wrote: "All freights on all of the vessels are coming directly to the National Bank of North America. The freights do service the debts of each vessel." This statement, of course, was a total fabrication, because he had repeatedly made loans, later repaid by Galaxy Steamship, to cover loan payments which should have been serviced by the freights or charterhire on purported "Scufalos" vessels but which was not being received.

The evidence at trial was more than sufficient to support the charges of misapplication on which Metzger was convicted. It overwhelmingly established that Metzger wrongly caused the funds of the bank to be misused for the benefit of a third party, *United States v. Docherty*, 468 F.2d 989, 993 (2d Cir. 1972); *United States v. Wil-*

son, 500 F.2d 715, 720 (5th Cir. 1974), *cert. denied sub nom. White v. United States*, 420 U.S. 977 (1975); that he repeatedly made unauthorized loans, *United States v. Giordano*, 489 F.2d 327, 331 (2d Cir. 1973); *Robinson v. United States*, 30 F.2d 25, 27 (6th Cir. 1929); that he repeatedly concealed and misrepresented relevant facts in connection with loans he recommended and made, *United States v. Giordano, supra*, 489 F.2d at 333; and that he acted with reckless disregard of the interests of the bank under circumstances where the necessary effect of his acts was to expose the bank to the risk of injury and fraud. *Id.*, 489 F.2d at 333; *United States v. Wilson, supra*, 500 F.2d at 720; *United States v. Tokoph*, 514 F.2d 597, 603-04 (10th Cir. 1975); *Giragosian v. United States*, 349 F.2d 166 (1st Cir. 1965); *Golden v. United States*, 318 F.2d 357, 361 (1st Cir. 1963); *Galbreath v. United States*, 257 F. 648, 656 (6th Cir. 1918).

CONCLUSION

The judgment of conviction should be affirmed.

Respectfully submitted,

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APPENDIX

APPENDIX—GX 150

APPENDIX—GX 152

APPENDIX—GX 153

APPENDIX—GX 154

*[For the Convenience of the Court these Exhibits
are reproduced on the opposite page.]*

GX - 150

AMOUNTS OUTSTANDING ON "MARK SCUFALOS" LOANS

<u>Date</u>	<u>Loan</u>	<u>Repayment (Of Principal)</u>	<u>Ships</u> 6 DRY CARGO VESSELS
AUG. 11, 1971	\$ 3,300,000		
AMOUNT OUTSTANDING AS OF OCT. 15, 1971		=	\$3,300,000
AMOUNT OUTSTANDING ACCORDING TO MAY AND JUNE LOAN FACT SHEET DATED OCT. 15, 1971		=	"SLIGHTLY IN EXCESS" of 2,800,000
NOV. 3, 1971	\$ 1,700,000		MAY AND JUNE 6 DRY CARGO VESSELS
NOV. 15, 1971	242,000	\$ 275,000	
AMOUNT OUTSTANDING AS OF DEC. 8, 1971		=	\$4,967,000
AMOUNT OUTSTANDING ACCORDING TO TROPIS AND TEKTON LOAN OFFERING SHEET DATED DEC. 8, 1971		=	3,025,000
DEC. 14, 1971		\$ 242,000	6 DRY CARGO VESSELS TROPIS AND TEKTON
DEC. 24, 1971	\$ 5,500,000		MAY AND JUNE 6 DRY CARGO VESSELS
FEB. 3, 1972		116,667	TROPIS AND TEKTON
FEB. 16, 1972		275,000	
MAR. 27, 1972		275,000	
AMOUNT OUTSTANDING AS OF APR. 28, 1972		=	\$9,558,333
AMOUNT OUTSTANDING ACCORDING TO TAGMA LOAN FACT AND OFFERING SHEETS DATED APR. 28, 1972		=	
(OFFERING SHEET)		=	4,400,000
(FACT SHEET)		=	"SLIGHTLY IN EXCESS" of 4,400,000

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"SCUFALOS" LOANS

<u>DATE</u>	<u>AMOUNT</u>	<u>SHIPS</u>
AUG. 11, 1971	\$ 3,300,000	6 DRY CARGO VESSELS
NOV. 3, 1971	1,700,000	MAY AND JUNE
NOV. 15, 1971	242,000	6 DRY CARGO VESSELS (SHORT TERM)
DEC. 24, 1971	5,500,000	TROPIS AND TEKTON
JUNE 16, 1972	3,200,000	TAGMA
JULY 6, 1972	115,000	1 OF 6 DRY CARGO VESSELS
JULY 6, 1972	125,000	TROPIS AND TEKTON
JULY 6, 1972	125,000	

SHORT TERM TIDAL MARINE LOANS

AUG. 27, 1971 - MAR. 20, 1972	\$ 807,650	TIDAL MARINE SUBSIDIARIES AND AFFILIATED COMPANIES
MAY 16, 1972	326,563	GALAXY STEAMSHIP CORP., A TIDAL MARINE SUBSIDIARY

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SHORT TERM LOANS

<u>Date</u>	<u>Loan Amount - Term</u>	<u>Repayment</u>	<u>Bank Officers</u>	<u>Borrower</u>
AUG. 27, 1971	\$100,000 - 45 days		M	ALTOMAR STEAMSHIP
SEPT. 15, 1971	100,000 - 30 days		M	PARK LANE PROPERTIES
OCT. 5, 1971	50,000 - 50 days		SH	ELDORADO INVESTMENTS
OCT. 13, 1971	100,000 - 45 days		M	IONIC SHIPPING AGENCY
OCT. 14, 1971		\$ 100,000		PARK LANE PROPERTIES
OCT. 14, 1971	100,000 - 45 days	NEW LOAN	M	ALTOMAR STEAMSHIP
OCT. 20, 1971	45,000 - 30 days		SH	LEADERSHIP INVESTMENTS
NOV. 5, 1971		\$ 100,000		IONIC SHIPPING AGENCY
NOV. 30, 1971	45,000 - 30 days	NEW LOAN	SH	LEADERSHIP INVESTMENTS
DEC. 1, 1971	50,000 - 50 days	NEW LOAN	SH	ELDORADO INVESTMENTS
DEC. 1, 1971	100,000 - 30 days	NEW LOAN	M	ALTOMAR STEAMSHIP
DEC. 21, 1971	45,000 - 21 days	NEW LOAN	SH	LEADERSHIP INVESTMENTS
DEC. 24, 1971	50,000 - 21 days	NEW LOAN	SH	ELDORADO INVESTMENTS
DEC. 31, 1971	100,000 - 30 days	NEW LOAN	SP, SH	ALTOMAR STEAMSHIP
JAN. 2, 1972	45,000 - 39 days	NEW LOAN	SH, SP	LEADERSHIP INVESTMENTS
JAN. 18, 1972	50,000 - 45 days	NEW LOAN	SH	ELDORADO INVESTMENTS
JAN. 18, 1972	98,000 - 45 days		M, SH, SP	GALAXY STEAMSHIP
JAN. 18, 1972	98,000 - 45 days		M, SH, SP	GLOBAL SEAS
JAN. 28, 1972	101,650 - 30 days	\$ 100,000	M	ALTOMAR STEAMSHIP
FEB. 18, 1972	90,000 - 30 days		M	SOUTHEAST TANKERS
FEB. 22, 1972	45,000 - 7 days	NEW LOAN	SH	LEADERSHIP INVESTMENTS
FEB. 28, 1972	45,000 - 7 days	NEW LOAN	SH	LEADERSHIP INVESTMENTS
FEB. 28, 1972	50,000 - 10 days	NEW LOAN	SH	ELDORADO INVESTMENTS

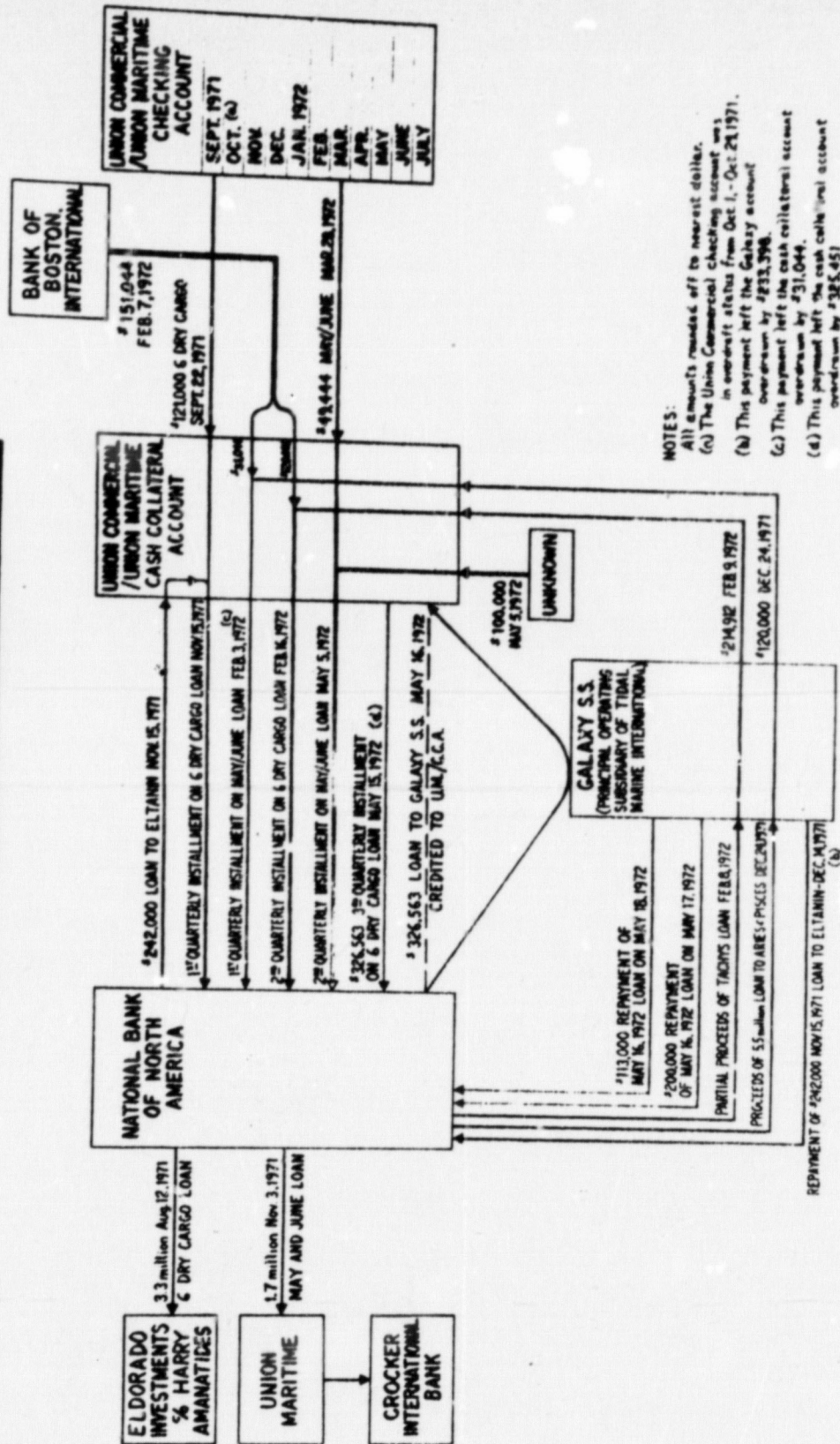
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SHORT TERM LOANS

<u>Date</u>	<u>Loan Amount - Term</u>	<u>Repayment</u>	<u>Bank Officers</u>	<u>Borrower</u>
MAR. 6, 1972	\$ 98,000 - 7 days	NEW LOAN	M. SH. SP	GALAXY STEAMSHIP
MAR. 6, 1972	98,000 - 7 days	NEW LOAN	M. SH. SP	GLOBAL SEAS
MAR. 6, 1972	50,000 - 7 days	NEW LOAN	M. SH. SP	ELDORADO INVESTMENTS
MAR. 6, 1972	125,000 - 7 days		M. ?	IONIC SHIPPING AGENCY
MAR. 6, 1972	45,000 - 7 days	NEW LOAN	M. SH. SP	LEADERSHIP INVESTMENTS
TOTAL SHORT TERM LOANS OUTSTANDING AS OF MAR. 6, 1972 - \$607,650				
MAR. 13, 1972	\$150,000 - 21 months		M. SH. SP	VALIANT NAVIGATION
MAR. 13, 1972	150,000 - 21 months		M. SH. SP	ANDROMEDA NAVIGATION
MAR. 13, 1972		\$ 125,000		IONIC SHIPPING AGENCY
MAR. 13, 1972		45,000		LEADERSHIP INVESTMENTS
MAR. 13, 1972		98,000		GLOBAL SEAS
MAR. 13, 1972		98,000		GALAXY STEAMSHIP
MAR. 13, 1972		50,000		ELDORADO STEAMSHIP
MAR. 13, 1972		101,650		ALTOMAR STEAMSHIP
MAR. 14, 1972			M. SH	SOUTHEAST TANKERS
MAR. 20, 1972	\$ 90,000 - 52 days	NEW LOAN		SOUTHEAST TANKERS
MAY 11, 1972		\$ 90,000		

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SIX DRY CARGO AND MAY/JUNE LOANS



NOTES:

- (a) All amounts rounded off to nearest dollar.
- (b) The Union Commercial checking account was in overdraft status from Oct 1 - Oct 24, 1971.
- (c) This payment left the Galaxy account overdrawn by \$233,398.
- (d) This payment left the cash collateral account overdrawn by \$31,044.
- (e) This payment left the cash collateral account overdrawn by \$325,451.

AFFIDAVIT OF MAILING

State of New York)

County of New York)

SS :

MARC MARMARO being duly sworn,
deposes and says that he is employed in the office of
the United States Attorney for the Southern District
of New York.

That on the 23rd day of September, 1976
he served ~~a copy~~ of the within Brief
two copies
by placing the same in a properly postpaid franked
envelope addressed:

Morton S. Robson,
Ballou, Stoll & Itzler
1180 Avenue of the Americas
New York, New York 10036

And deponent further says that he sealed the said
envelope and placed the same in the mail box for mailing
at One St. Andrew's Plaza, Borough of Manhattan, City of
New York.

Marc Marmaro
MARC MARMARO

Sworn to before me this

23rd day of September, 1976

Alma Hanson

ALMA HANSON
NOTARY PUBLIC, State of New York
No. 24-6763450 Qualified in Kings Co.
Commission Expires March 30, 1978